

Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Thus, claim 1 has been amended to delete the nicotinoyl group from the definition for R².

Claim 3 has been cancelled.

Claims 9 and 10 have been amended to depend from any one of claims 20, 21 or 33.

[Claim 33 is a new claim which will be discussed below.]

Claim 14 has been amended to depend from any one of claims 1, 20, 21 or 33.

Claim 19 has been amended to limit the definition for R¹ in the same manner as in claim 1 from which claim 19 depends.

Claim 23 has been cancelled.

Each of claims 24-27 has been amended to depend from new claim 33 discussed below.

Each of claims 28, 29 and 31 has been amended to depend from any one of claims 1, 20, 21 or 33.

New claim 33 corresponds to cancelled claim 23 except that R² has been limited to a picolinoyl group substituted as indicated. The definitions for R¹, the substituents for the R² picolinoyl group, and R³ are taken from claim 21, on which claim 23 depended.

New claim 34 corresponds to claim 21, except that it limits the substituents on the R² picolinoyl group, and also defines R³ as a hydrogen atom, like claim 1. Claim 34 is supported by the disclosure from page 7, line 33 to page 8, line 5 of the specification, along with Examples 18-35 in Table 1 in the specification.

Referring to the Request for New Office and Resetting Date for Response filed July 25, 2005, Applicants again note that there is no indication in the Office Action concerning the status of claims 29 and 31.

The patentability of the presently claimed invention over the disclosures of the reference relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Thus, the rejection of claims 23, 24 and 26 under 35 U.S.C. §102(b) as being anticipated by Ueki et al. (Vol. 50, No. 7) is respectfully traversed.

Initially, Applicants note that all of claims 23, 24 and 26 are dependent on claim 21, which is not subject to this rejection. Furthermore, on page 4 of the Office Action, the Examiner notes that claim 21 (as well as claims 20 and 27) is directed to compounds which are patentable over the prior art compound because the R³ group is not hydrogen but must be nitro, amino, acylamino, or N,N-dialkylamino.

In any case, as indicated above, claim 23 has been rewritten as new claim 33, which limits the definition for R³ to nitro, amino, acylamino, or N,N-dialkylamino, thus being distinct from the UK-3A compound in Ueki et al. specifically mentioned by the Examiner, which has a hydrogen atom in place of R³ in the compounds of claim 33. Claims 24 and 26 are both dependent on claim 33, and are therefore distinguished over Ueki et al. for the same reason that claim 33 is distinguished over this reference. Again, Applicants refer to the Examiner's comments on page 4 of the Office Action concerning the patentability of claims 20-21 and 27 over Ueki et al., which are equally applicable to claims 24 and 26 as well as new claim 33.

The rejection of claims 1, 3, 14 and 28 under 35 U.S.C. §103(a) as being unpatentable over Ueki et al. is respectfully traversed.

The Examiner states that the UK-3A compound of the reference contains a 3-hydroxypicolinic acid ring which is a positional isomer of the R² variable of the claimed compounds which is the nicotinoyl group. As indicated above, claim 1 has been amended to delete the nicotinoyl group from the definition for R². For this reason, the rejection of the claims under 35 U.S.C. §103(a) should be withdrawn.

Applicants respectfully submit that the compounds of new claim 34 are also patentable over the Ueki et al. reference. The claimed compounds are those wherein R² represents a picolinoyl group having the 3-position substituted by acyloxy and the 4-position substituted by methoxy. On the other hand, the UK-3A compound of Ueki et al. has a 3-hydroxypicolinic acid ring, i.e., a 3-hydroxypicolinoyl group, represented by R². Additionally, the compound of claim 34, represented by Example 18 in the specification, has superior persistence of the effect of

preventing and exterminating plant diseases derived from fungi under sunlight as compared with UK-2A, as demonstrated by Test Examples 5-7 and Tables 7-9 in the specification. In this regard, UK-2A in Test Examples 5-7, although not suggesting the compounds of claim 34, is closer in structure to the compounds of claim 34 than is the UK-3A compound of Ueki et al., since unlike the UK-3A compound, the UK-2A compound has a methoxy group at the 4-position of the picolinoyl group.

For the reasons set forth above, Applicants take the position that the rejections of the claims based on the Ueki et al. reference should be withdrawn.

All of the grounds for rejecting claims 19 and 23-26 under the second paragraph of 35 U.S.C. §112 have been rendered moot in view of the claim amendments.

Thus, claim 19 has been amended to limit R¹ to the definition for R¹ in claim 1 on which claim 19 depends.

Claim 23 has been rewritten as new claim 33 in independent form, which limits the substituents to those recited therein.

Claims 24-26 have been amended to depend from claim 33, providing antecedent basis for the picolinoyl group.

The Examiner has objected to claims 20-21 and 27 because they are based on a rejected claim. Initially, Applicants note that claims 20-21 are independent claims, and therefore, are not based on a rejected claim. Claim 27 is dependent on claim 33 which replaces claim 23 as discussed above.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection and objection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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